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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FCC 93M-607

32440

In re Applications of  
TRINITY CHRISTIAN CENTER OF  
SANTA ANA, INC., d/b/a  
TRINITY BROADCASTING NETWORK

For Renewal of License  
of Station WHSG(TV)  
Monroe, Georgia

and

GLENDALE BROADCASTING COMPANY

For Construction Permit  
Monroe, Georgia

MM Docket No. 93-156

File No. BRCT-911129KE

File No. BPCT-920228KE

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MEMORANDUM OPINION AND ORDER

Issued: September 20, 1993 ; Released: September 22, 1993

1. Under consideration are "Motion To Dismiss Application" filed June 25, 1993 by Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network (Trinity), Mass Media Bureau's Opposition To Motion To Dismiss Application filed July 8, 1993, Opposition To Motion To Dismiss Application filed July 8, 1993 by Glendale Broadcasting Company (Glendale), Reply To Opposition To Motion To Dismiss Application filed July 15, 1993 by Trinity, "Contingent Motion To Enlarge Issues" filed August 12, 1993 by Trinity, Mass Media Bureau's Comments On Contingent Motion To Enlarge Issues filed September 1, 1993, Opposition To Contingent Motion To Enlarge Issues filed September 1, 1993 by Glendale, Reply To Opposition To Contingent Motion To Enlarge Issues filed September 7, 1993 by Trinity, "Motion For Leave To File Reply" filed September 8, 1993 by Glendale,<sup>1</sup> and Reply To Mass Media Bureau's Comments On Contingent Motion To Enlarge Issues filed September 8, 1993 by Glendale.

2. Trinity seeks summary dismissal of Glendale's application based upon its argument that Glendale was not financially qualified at the time it filed its application. Trinity's motion is totally unfounded, factually and legally, and will be denied. Its contingent motion for a financial issue will also be denied.

3. Glendale estimates the costs of construction and initial operation of its proposed Monroe station to be \$2,871,066. To meet these costs, Glendale relies on a personal loan commitment from its president and majority stockholder, George F. Gardner. That commitment is contained in a letter dated

<sup>1</sup> Glendale's motion for leave to file reply, which is unopposed, will be granted and its reply accepted.

February 26, 1992 from Gardner to his daughter, who is Glendale's other principal. At the time of the Monroe commitment, Gardner was also committed to supply the funds necessary for the construction and initial operation of Glendale's pending Miami application. Glendale listed the estimated costs for that facility as \$2,169,816. Thus, Gardner's combined loan commitment on February 26, 1992 totaled \$5,040,882. On March 26, 1992, Glendale amended in Miami to substitute a bank letter in lieu of Gardner's personal loan for the Miami application, reducing Gardner's total commitment to the \$2,871,066 projected for Monroe. As recited in Gardner's declaration appended to Glendale's opposition to the motion to dismiss, when he signed the Miami and Monroe applications, Gardner had a financial statement showing that he had assets of \$11,997,327 with no liabilities.

4. In pressing its request for dismissal and its contingent request for addition of a financial issue, Trinity does not question Gardner's statement that he had nearly \$12,000,000 available to finance the Miami and Monroe applications. Trinity predicates its requests for relief solely on the following language in the February 26, 1992 letter:

I have more than sufficient assets to meet this commitment. While I do not have net liquid assets totaling this amount, I have more than sufficient assets which I can sell to meet this loan commitment. I have identified specific assets which are unencumbered and that can be readily converted to cash or other liquid assets. The sale of those assets would provide me with sufficient liquid assets to meet this loan commitment. I am willing to sell such assets as are necessary to meet this commitment.

Trinity speculates that in the absence of specific language, Gardner "had not conducted appraisals and did not own sufficient assets net of current liabilities when he certified Glendale's financial qualifications." Trinity Motion p. 6. Trinity has not offered a single piece of factual evidence in support of its conclusory allegations.

5. Trinity has not even come close to justifying the draconian remedy of summary dismissal. None of the five cases cited on page 9 of Trinity's motion is apposite. Four of the cases cited involve situations where applicants were unable to establish they were financially qualified following the addition of an issue. The fifth case concerned an applicant's failure to timely provide a financial amendment called for in the Hearing Designation Order. No financial issue has been added here. Moreover, as discussed infra, since Trinity has failed to raise a substantial and material question about Glendale's financial qualifications, such issue is not warranted. Further, Glendale has not sought to amend its financial showing and the existence of good cause is, therefore, not in issue. Trinity's motion for summary dismissal will be denied.

6. Trinity's request for a financial issue is also baseless and will be denied. Procedurally, Trinity bears the burden of making a prima facie case for adding a financial issue and Glendale has no obligation to document its financial plan until Trinity meets that burden. Priscilla L. Schwier, 4 FCC Rcd 2659, 2660 (1989). As noted in Schwier, the Presiding Judge does not have authority to explore matters simply out of curiosity. Trinity has not met the requisite burden since Trinity has offered nothing more than speculation and

its motion is bereft of factual support. Its motion falls far short of meeting the threshold requirement set forth in 47 C.F.R. §1.229(d) that there be "specific allegations of fact sufficient to support the action requested."

7. Trinity's speculation that Gardner did not have appraisals performed on his non-liquid assets prior to certification is without any factual support. Trinity has not offered any affidavit or sought official notice of a document which demonstrates that appraisals were absent at the time of certification. Trinity has improperly attempted to place the burden on Glendale by arguing that the absence of appraisals must be inferred because Glendale has not specifically stated that appraisals existed. However, as Schwier makes clear, the burden is on Trinity to support its allegations in accordance with the requirements of Section 1.229(d). Furthermore, Trinity's speculation rests on a faulty premise since Trinity has not demonstrated that Gardner was required to have professional appraisals of non-liquid assets in hand when he certified. None of the cases cited by Trinity support this proposition. As pointed out by Glendale, the June 1989 version of FCC Form 301 used by Glendale does not impose such requirement. In this connection, Gardner's letter to his daughter appears to comply with the Commission's documentation requirements for non-liquid assets. See Instructions for Section III - Financial Requirements, page 6. It is true that the Commission has a responsibility to look for fire "when it is shown a good deal of smoke." Citizens for Jazz on WRVR v. FCC, 775 F.2d 392, 397 (D.C. Cir. 1985). However, it also follows that where there is not even a glimmer of smoke suggesting a defect in Glendale's financial certification, the addition of an issue is not justified.


8. Trinity's contingent motion also requests issues previously considered and denied in the Miami proceeding.<sup>2</sup> For the reasons recited in the Miami ruling (FCC 93M-469, released July 15, 1993), incorporated by reference, Trinity's request will be denied.

Accordingly, IT IS ORDERED, That the "Motion To Dismiss Application" filed June 25, 1993 by Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network IS DENIED.

IT IS FURTHER ORDERED, That the "Motion For Leave To File Reply" filed September 8, 1993 by Glendale Broadcasting Company IS GRANTED.

IT IS FURTHER ORDERED, That the "Contingent Motion To Enlarge Issues" filed August 12, 1993 by Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

  
Joseph Chachkin  
Administrative Law Judge

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<sup>2</sup> Trinity states it is formally requesting designation of these issues to preserve its appellate rights.